

UNITED STATES COURT OF APPEALS

AUG 1 2001

TENTH CIRCUIT

PATRICK FISHER
Clerk

JAMES JOSEPH OWENS-EL,

Petitioner-Appellant,

v.

MICHAEL V. PUGH, Warden,

Respondent-Appellee.

No. 00-1482
(D.C. No. 00-Z-2158)
(Colorado)

ORDER AND JUDGMENT*

Before **SEYMOUR, McKAY**, Circuit Judges, and **BRORBY**, Senior Circuit Judge.

James Joseph Owens-El, a pro se federal prisoner, brought this petition under 28 U.S.C. § 2241, alleging that his continuing incarceration is invalid because the sentence he is serving was terminated on the government's motion in

*After examining appellant's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2) and 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, or collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

1992. He also alleges that he is being harassed and tortured through a mind-control device. The district court found Mr. Owens' claim that his sentence had been terminated was contradicted by information Mr. Owens submitted in support of his application, and dismissed this claim. Although the court construed Mr. Owens' allegations of harassment and torture as challenges to his conditions of confinement which should have been asserted in a civil rights complaint, the court addressed the merits and dismissed these claims as frivolous. Mr. Owens seeks leave to proceed on appeal in forma pauperis.

The material attached to Mr. Owens' application contains a docket sheet from the federal district court in the Central District of California, which reflects that the proceedings in his underlying criminal prosecution for attempted murder were dismissed on the government's motion on March 23, 1992. However, the record also contains a notice of clerical error from the district court clerk stating that this docket entry was in error, as well as a docket entry of the notice of error. Accordingly, Mr. Owens' challenge to his continuing incarceration is factually baseless.

The district court dismissed Mr. Owens' claims concerning his conditions of confinement under 28 U.S.C. § 1915(e)(2)(B), concluding that they were factually frivolous. Subsequent to the district court's dismissal, we held that a petitioner may not raise challenges to conditions of confinement in a section 2241

petition. *See Boyce v. Ashcroft*, 251 F.3d 911, 918 (10th Cir. 2001). Such a claim must be brought instead as a civil rights action under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

For the reasons set out above, we conclude that Mr. Owens has failed to demonstrate the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal. Accordingly, we deny his request to proceed in forma pauperis and **DISMISS** his appeal.

ENTERED FOR THE COURT

Stephanie K. Seymour
Circuit Judge